



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1996

Mr. Alan P. Petrov
Johnson, Radcliffe & Petrov, L.L.P.
Paragon Center One
450 Gears Road, Suite 700
Houston, Texas 77067-4513

OR96-2021

Dear Mr. Petrov:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101492.

The City of Bellaire (the "city"), which you represent, received a request for "the name(s), addresses and any other pertinent information concerning the[se] applicants, and the final choice for the position," of city manager. You state that the "City has not designated a list of finalists or the final choice with respect to the position in question."¹ You have submitted to this office five records, which you assert are responsive to the request. However, you contend that the city may withhold the requested information from required public disclosure based on sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

We first address your assertion that section 552.101 of the Government Code excepts all of the submitted information from required public disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either

¹We note that chapter 552 does not apply to information that does not exist, *see* Open Records Decision No. 555 (1990), nor does chapter 552 require governmental bodies to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio, 1978, writ dismissed). The city should, however, make a *good-faith* effort to relate the open records request to information in the city's possession. Open Records Decision No. 87 (1975).

constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 552.101 also encompasses common-law and constitutional privacy. Under common-law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

In the past, this office has concluded that the doctrine of common-law privacy does not protect an applicant’s or employee’s educational training; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performance or ability; birth dates; height; weight; marital status; and social security numbers. *See generally* Open Records Decision No. 455 (1987) at 8. We have examined and reviewed the submitted information, which consists of resumes and vitae of those considered by the city for the position of city manager. We conclude that the submitted documents do not contain any information that is intimate or embarrassing. Moreover, the public has a legitimate interest in this information. *See* Open Records Decision No. 455 (1987) at 9 (public has an interest in applicant’s past employment record and suitability for position in question). Accordingly, the district may not withhold such information based on section 552.101 of the Government Code in conjunction with common-law or constitutional privacy.

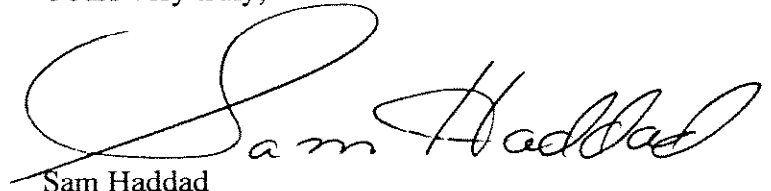
As you may not withhold any of the submitted records pursuant to section 552.101, we next address your assertion that section 552.111 excepts this information. Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of memoranda. *Id.* at 4-5. Furthermore, section 552.111 does not except from disclosure information regarding routine personnel matters. *See* Open Records Decision No. 615 (1993) (holding that section 552.111 does not except information relating to routine administrative or personnel matters). The information you have submitted to our office for review consists of resumes and vitae of those considered by the city for the position of city manager, which is information related to personnel matters of the city. *See* Open Records Decision Nos. 439 (1986) (the public is entitled to the names and resume information about persons who apply directly to governmental body), 264 (1981), 257 (1980). Therefore, the submitted information may not be withheld pursuant to section 552.111 of the Government Code. Consequently, as we have determined the exceptions you claim do not apply to the submitted records you must release this information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", written in a cursive style.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 101492

Enclosures: Submitted information

cc: Ms. Kathleen Ballanfant, Publisher
Ms. Marsha Carter, Staff Reporter
News Publications, Inc.
5160 Spruce
Bellaire, Texas 77101
(w/o enclosures)